Moden Hartawan Sdn Bhd v Pentadbir Tanah Johor Bahru

HIGH COURT (JOHOR BAHRU) — ORIGINATING SUMMONS NO 24NCVC-405–07 OF 2014
GUNALAN MUNIANDY JC
26 NOVEMBER 2014

Land Law — Registrar's caveat ('RC') — Application for removal of caveat — Whether no valid grounds in law shown for entry of RC — Whether register document of title ('RDT') showed vendor who contracted to sell property to plaintiff was the registered owner — Whether note on RDT of transfer of the land to another party could be ignored as that presentation did not bear authorisation of land administrator in contravention of ss 304 and 305 of National Land Code 1965 — Whether vendor had indefeasible title and could pass good title to plaintiff as bona fide purchaser for value — Whether registrar estopped from denying his certification that vendor was registered owner of property — Whether registrar's entry of RC to prevent transfer to plaintiff wrongful

The plaintiff bought a piece of land from its registered owner Wan Heng Sdn Bhd ('WH') free from encumbrances and for valuable consideration in reliance upon a land search and the defendant's certification showing that WH was the registered owner at all material times. The plaintiff later found he could not register the transfer of the title into his name because of the existence of a registrar's caveat ('RC'). The plaintiff made the instant application to have the RC cancelled pursuant to s 418 of the National Land Code.

Held, allowing the application:

(1) The defendant did not have valid grounds in law to enter the RC on the land and the plaintiff as the aggrieved party was qualified to apply for its removal/cancellation. The registrar had wrongly entered the caveat and had erroneously refused to register the duly executed transfer of title from WH to the plaintiff (see para 8).

(2) The document of title exhibited by the defendant showed the registered proprietor to be WH since 17 August 1993 pursuant to Presentation No 601/93 which was duly signed and sealed by the land administrator ('LA') on that day. The second presentation, bearing the same number, for transfer to one 'Wan Neng' showed only the seal but without the authentication by the LA in contravention of ss 304 and 305 of the NLC. The second presentation was invalid and a nullity for failure to adhere to mandatory statutory requirements under ss 304(2)(a) and 305(2) of the NLC. It could thus be safely disregarded by the court for the purposes of this case (see para 5).

(3) WH had an indefeasible registered title to the subject land and was capable of passing a good title to the plaintiff at the material time. WH had lawfully acquired ownership through a duly registered presentation of transfer from the previous registered owner. The transfer was, thus, regular and valid under the NLC. The plaintiff was a bona fide purchaser for value and became the equitable and beneficial owner of the land after he had paid WH the full purchase price and the latter had executed the transfer form and handed over possession of the issue document of title to the plaintiff (see paras 3 & 6).

(4) The registrar, after issuing the certification of title on 4 July 2013 showing that the ownership of the land was wholly in WH's name, was estopped from denying the certification to the detriment of the plaintiff who had relied on the same to purchase the property (see para 7).

[Bahasa Malaysia summary

Plaintif telah membeli sebidang tanah daripada pemilik berdaftarnya Wan Heng Sdn Bhd ('WH') bebas daripada kekangan dan bagi balasan bernilai dengan bergantung kepada carian tanah dan pengesahan defendan yang menunjukkan bahawa WH merupakan pemilik berdaftar pada setiap masa material. Plaintif seterusnya mendapati bahawa dia tidak boleh mendaftarkan pindah milik hak milik tersebut ke atas namanya kerana kewujudan kaveat pendaftar ('KP'). Plaintif memfailkan permohonan ini untuk membatalkan KP di bawah s 418 Kanun Tanah Negara ('KTN').

Diputuskan, membenarkan permohonan:

(1) Defendan tidak mempunyai alasan-alasan yang sah di bawah undang-undang untuk memasukkan KP ke atas tanah dan plaintif sebagai pihak yang terkilan layak untuk memohon bagi pembatalan/penyingkirannya. Pendaftar telah memasukkan kaveat secara salah dan telah terkhilaf dalam keengganannya untuk mendaftarkan pindah milik hak milik daripada WH kepada plaintif (lihat perenggan 8).

(2) Dokumen hak milik yang diekshibitkan oleh defendan menunjukkan bahawa pemilik berdaftar adalah WH sejak 17 Ogos 1993 di bawah Presentation No 601/93 yang ditandatangani dan dimeterai oleh pentadbir tanah ('PT') pada hari yang sama. Semasa pengemukaan kedua, yang mempunyai nombor yang sama, bagi pindah milik kepada seorang yang bernama 'Wan Neng' menunjukkan bahawa hanya dimeterai tanpa pengesahan oleh PT, bercanggah dengan ss 304 dan 305 KTN. Pengemukaan kedua adalah tidak sah atas kegagalan untuk mematuhi keperluan mandatori statutori di bawah ss 304(2)(a) dan 305(2) KTN. Ia boleh, dengan itu, diabaikan oleh mahkamah bagi tujuan kes ini (lihat perenggan 5).

(3) WH mempunyai hak milik berdaftar tak boleh sangkal ke atas tanah tersebut dan boleh memindah hak milik tersebut kepada plaintif pada masa material. WH telah, dengan sah, memperoleh pemilikan melalui pengemukaan hak milik yang berdaftar daripada pemilik berdaftar terdahulu. Hak milik tersebut, oleh itu, adalah teratur dan sah di bawah KTN. Plaintif adalah pembeli suci hati bagi balasan bernilai dan menjadi pemilik berekuiti dan benefisial tanah tersebut selepas dia membayar harga belian penuh kepada WH dan WH melaksanakan borang pindah milik dan menyerahkan milikan dokumen hak milik keluaran kepada plaintif (lihat perenggan 3 & 6).

(4) Pendaftar, selepas mengeluarkan pengesahan hak milik pada 4 Julai 2013 menunjukkan bahawa milikan tanah tersebut terletak sepenuhnya di bawah nama WH, diestop daripada menafikan pengesahan tersebut, menjejaskan plaintif yang bergantung kepadanya untuk membeli hartanah tersebut (lihat perenggan 7).]]

Notes

For cases on application for removal of caveat , see 8(3) *Mallal's Digest* (5th Ed, 2015) paras 4324–4336.

Legislation referred to

National Land Code ss 89, 304, 304(2)(a), 305, 305(2), 320, 418, Form 14A

Wong Kim Fatt (Wong Boon Chong and Chua Yee Leng with him) (Gulam & Wong) for the plaintiff.

Farra Nor Azura bt Jamuddin (Federal Counsel, Attorney General's Chambers) for the defendant.

Gunalan Muniandy JC:

[1] The plaintiff ('P') prays for the registrar's caveat to be cancelled forthwith pursuant to s 418 of the National Land Code ('the NLC'). The caveat was entered on the subject land (Lot 4445, Geran Mukim 1973, Mukim of Pulai, District of Johor Bahru) by the registrar/land administrator ('LA').

[2] The plaintiff purchased the subject land from its registered proprietor, Wan Heng Sdn Bhd ('WH') free from any encumbrances for valuable consideration. The land search together with the defendant's certification of title showed that the vendor ('WH') was the registered proprietor at all material times and P was a bona fide purchaser for value without notice of any alleged fraud or mistake in the transfer of ownership of the subject land to WH. P relied on the certification by the defendant before entering into the sale and purchase agreement ('the SPA') to purchase the subject land.

[3] Having paid the full purchase price of the land to the vendor, who then executed the Form 14A and handed over possession of the issue document of title ('IDT') and the land to P, P became the sole equitable and beneficial owner of the subject land while WH became the bare trustees for P with no further interest in or claim to title to the land. Hence, P had sufficient interest and capacity to make the application for cancellation of the registrar's caveat that prohibited registration of title of the said land in P's name.

[4] The question is whether the registrar's caveat was wrongly entered under s 320 of the NLC?

[5] The document of title exhibited by the defendant himself shows the registered proprietor to be the above vendor since 17 August 1993 vide Presentation No 601/93 which was duly signed and sealed by the LA on that day. The second presentation bearing the same number for transfer to one 'Wan Neng' shows only the seal but without the authentication by the LA which is in contravention of ss 304 and 305 of the NLC. The presentation is invalid and a nullity for failure to adhere to mandatory statutory requirements under ss 304(2)(a) and 305(2) of the NLC. It can, thus, be safely disregarded by the court for the purposes of this case.

[6] Under the Torrens system of land administration practised in Malaysia and legislated via the NLC, the register is everything and absolute with regard to title and ownership save for some exceptions recognised under the NLC which do not apply to the present case. The vendor (WH) had an indefeasible registered title to the subject land and was capable of passing a good title to the subject land to P at the material time who as a bona fide purchaser for value had become the equitable and beneficial owner. WH had lawfully acquired ownership through a duly registered presentation of transfer from the previous registered proprietor. The transfer was, thus, regular and valid under the relevant provisions of the NLC.

[7] The registrar, after having issued the certification of title on 4 July 2013 which showed that the ownership of the subject property was wholly in the name of WH, is now estopped from denying the certification to the detriment of the plaintiff who relied on the document of title duly certified to purchase and obtain ownership of the property lawfully.

[8] For the above reasons, I held that the defendant did not have valid grounds that were good in law to enter the registrar's caveat on the land particularly in view of the conclusiveness of the register document of title ('RDT') under s 89 of the NLC. The plaintiff was clearly an aggrieved party by the entry and existence of the caveat and thus, qualified to apply for its removal or cancellation under s 418 of the NLC. I, therefore, held that the registrar had

wrongly entered the caveat and erroneously refused to register the duly executed transfer documents of title by the then registered proprietor to the plaintiff when presented.

Application allowed.

Reported by Ashok Kumar